

## REMARKS

The claims remaining in the present application are Claims 1-44. The Examiner is thanked for performing a thorough search.

## CLAIM REJECTIONS

### 35 U.S.C. §101

#### Claims 4 and 35-44

In paragraph 4, the Office Action rejected Claims 4 and 35-44 under 35 U.S.C. 101 for being directed to non-statutory subject matter. The Office Action states, "A computer usable medium having computer usable code embodied therein" can be a piece of paper having written thereon instructions of a software program, and is therefore non-statutory. Applicants respectfully traverse. The preambles of the independent Claims 4 and 35 recite, "A computer useable medium having computer useable code embodied therein for causing a computer to perform operations comprising..." (emphasis added). A piece of paper cannot be used by a computer. Hand written code on a piece of paper is not embodied therein. A piece of paper cannot cause a computer to perform operations. One of ordinary skill in the art would understand what is meant by "A computer useable medium having computer useable code embodied therein for causing a computer to perform operations comprising..." (emphasis added). For at least these reasons, independent Claims 4 and 35 should be patentable. Claims 36-44 depend on independent Claim 35 and should be patentable for similar reasons that independent Claim 35 should be patentable.

### 35 U.S.C. §102

#### Claims 1-4, 15-17, and 35-37

In paragraph 6, the Office Action rejected Claims 1-4, 15-17 and 35-37 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,981,029 by Menditto et al. (referred to hereinafter as "Menditto"). Applicants respectfully submit that embodiments of the present invention are neither taught nor suggested by Menditto.

Claim 1 recites,

A method of selecting a media service provider based on static resource information, said method comprising:

    identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session with a client device;

    selecting a service provider from a plurality of service providers based on static service provider information and static network information, said

selecting of a service provider further based on service session information if said service session information has been received; and  
providing information for transferring said session to said service provider, wherein said service provider performs said service on said item of content.

Applicants respectfully submit that Menditto does not teach or suggest, "selecting a service provider from a plurality of service providers based on static service provider information and static network information, said selecting of a service provider further based on service session information if said service session information has been received," as recited by Claim 1.

The Office Action asserts that Menditto teaches "selecting a service provider from a plurality of service providers based on static service provider information and static network information, said selecting of a service provider further based on service session information if said service session information has been received" at Figure 2, Col. 3 lines 11-16, Col. 3 lines 51-61 and Col. 12 lines 23-27. Figure 2 does not depict anything about static service provider information or static network information let alone depict "selecting a service provider from a plurality of service providers based on static service provider information and static network information..." Menditto states at Col. 3 lines 11-16,

Content gateway 18 intercepts requests that are candidates for content processing, classifies requests by examining the content of the request, makes routing decisions based on the content of the request, and determines an appropriate content provider 14 server location to satisfy the request including location of servers in the best proximity to the client terminal 16.

Note that Col. 3 lines 11-16 state that routing decisions are based on the content of the request and is silent with regard to "selecting a service provider from a plurality of service providers based on static service provider information and static network information..." as recited by Claim 1.

Menditto states at Col. 3 lines 51-61,

At this point, the objective of content gateway 1 is to locate the "best" server and network connection for delivering data to client terminal 16, i.e., the server that will deliver the content the fastest with the required security protection. Determining the best server depends on various factors including whether the internet service provider implements a content delivering nodes, whether the content requested is static or dynamic, whether the content is replicated in different data centers or at the content delivery nodes, and which of the eligible servers are most heavily loaded.

Col. 3 lines 51-61 teach that determining a server for delivering data to a client terminal based on factors such as whether the internet service provider implements a content delivering nodes, whether the content requested is static or dynamic, whether the content is replicated or at the content delivery nodes, and which of the eligible servers are most heavily loaded. However, none of these factors teach or suggest "static service provider information" or "static network information" let alone teach or suggest "selecting a service provider from a plurality of service providers based on static service provider information and static network information...," as recited by Claim 1.

Menditto states at Col.12 lines 23-27,

Content gateway policy manager 26 is used to distribute content policies to content gateway processors 30 and separate policy server may be used to distribute quality of service policies to content gateway routers 28.

Concerning content policies, Menditto states at Col. 6 lines 23-30,

Appropriate content policy is kept in content gateway directory 32 in a memory space of the content gateway processor 30. Content gateway directory 32 is used to resolve the requests to the best server location. Content gateway directory 32 includes a content class that consists of a template and a set of rules for pattern matching the uniform resource locator (URL) of the request and, in accordance with one embodiment, the hyper text transfer protocol (HTTP) headers.

Note that a content policy is for pattern matching a URL of a request and therefore does not teach or suggest "static service provider information" or "static network information" let alone teach or suggest "selecting a service provider from a plurality of service providers based on static service provider information and static network information...," as recited by Claim 1.

Concerning quality of service policies, Menditto states at Col. 12 lines 45-48, "These policy data are constructed in accordance with agreements 27a, 27b, and 27c with the subscribed content providers..." Col. 9 lines 56-57 state, "If a policy update is received..." (emphasis added). Col. 13 lines 14-15 state, "generally this would result in a policy merge..." (emphasis added). Therefore Menditto's "policies" such as Menditto's "quality of service policies" do not teach or suggest "static service provider information" or "static network information" let alone teach or suggest "selecting a service provider from a plurality of service providers based on

static service provider information and static network information...," as recited by Claim 1.

For at least the foregoing reasons, Claim 1 should be patentable. For similar reasons independent Claims 2, 3, 4, 5, 15, 25 and 35 should also be patentable. Claims 6-14 depend on independent Claim 5. Claims 16-24 depend on independent Claim 15. Claims 26-34 depend on independent Claim 25. Claims 36-44 depend on independent Claim 35.

35 U.S.C. §103

Claims 5-14, 18-34, 38-44

In paragraph 16, the Office Action rejected Claims 5-14, 18-34 and 38-44 under 35 U.S.C. §103(a) as being unpatentable over Menditto in view of "Quality of Service Management Issues in Electronic Commerce Applications" by Bochmann (referred to hereinafter as "Bachmann"). Applicants respectfully submit that embodiments of the present invention are neither taught nor suggested by Menditto or Bachmann, alone or in combination.

Bochmann does not remedy the deficiencies in Menditto in that neither Bochmann nor Menditto teach or suggest "selecting a service provider from a plurality of service providers based on static service provider information and static network information...," as recited by Claim 1. In fact, the Office Action even admits that Bochmann does not teach or suggest "selecting a service provider from a plurality of service providers based on static service provider information and static network information...," as recited by Claim 1. As already stated, independent Claims 5, 15, and 35 should be patentable for similar reasons that independent Claim 1 should be patentable. Claims 6-14 depend on Claim 5. Claims 18-34 depend on Claim 15. Claims 38-44 depend on Claim 35. These dependent claims should be patentable for at least the reasons that their respective independent claims should be patentable.

CONCLUSION

In light of the above listed amendments and remarks, reconsideration of the rejected claims is requested. Based on the arguments and amendments presented above, it is respectfully submitted that Claims 1-44 overcome the rejections of record. For reasons discussed herein, Applicants respectfully request that Claims 1-44 be considered by the Examiner. Therefore, allowance of Claims 1-44 is respectfully solicited.

Should the Examiner have a question regarding the instant amendment and response, the Applicants invite the Examiner to contact the Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,  
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